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SENATE BILL 463

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO TAXATION; AMENDING PROVISIONS OF THE RENEWABLE ENERGY PRODUCTION TAX CREDIT IN THE CORPORATE INCOME AND FRANCHISE TAX ACT; PROVIDING FOR A RENEWABLE ENERGY PRODUCTION TAX CREDIT IN THE INCOME TAX ACT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005 BY REPEALING LAWS 2005, CHAPTER 104, SECTION 7.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2A-19 NMSA 1978 (being Laws 2002, Chapter 59, Section 1, as amended by Laws 2005, Chapter 104, Section 7 and by Laws 2005, Chapter 181, Section 1) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT-- LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. The tax credit provided in this section may be

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1 referred to as the "renewable energy production tax credit".
2 The tax credit provided in this section may not be claimed with
3 respect to the same electricity production for which the
4 renewable energy production tax credit provided in the Income
5 Tax Act has been claimed.

6 B. A person is eligible for the renewable energy
7 production tax credit if the person:

8 (1) holds title to a qualified energy
9 generator; or

10 (2) leases property upon which a qualified
11 energy generator operates from a county or municipality under
12 authority of an industrial revenue bond.

13 C. The amount of the tax credit shall equal one
14 cent (\$.01) per kilowatt-hour of the first four hundred
15 thousand megawatt-hours of electricity produced by the
16 qualified energy generator in the taxable year using a wind- or
17 biomass-derived qualified energy resource, provided that the
18 total amount of tax credits claimed by all taxpayers for a
19 single qualified energy generator in a taxable year using a
20 wind- or biomass-derived qualified energy resource shall not
21 exceed one cent (\$.01) per kilowatt-hour of the first four
22 hundred thousand megawatt-hours of electricity produced by the
23 qualified energy generator.

24 D. The amount of the tax credit for electricity
25 produced by a qualified energy generator in the taxable year

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1 using a solar-light-derived or solar-heat-derived qualified
2 energy resource shall be at the amounts specified in Paragraphs
3 (1) through (10) of this subsection; provided that the total
4 amount of tax credits claimed for a taxable year by all
5 taxpayers for a single qualified energy generator using a
6 solar-light-derived or solar-heat-derived qualified energy
7 resource shall be limited to the first two hundred thousand
8 megawatt-hours of electricity produced by the qualified energy
9 generator in the taxable year:

10 (1) one and one-half cents (\$.015) per
11 kilowatt-hour in the first taxable year in which the qualified
12 energy generator produces electricity using a solar-light-
13 derived or solar-heat-derived qualified energy resource;

14 (2) two cents (\$.02) per kilowatt-hour in the
15 second taxable year in which the qualified energy generator
16 produces electricity using a solar-light-derived or solar-heat-
17 derived qualified energy resource;

18 (3) two and one-half cents (\$.025) per
19 kilowatt-hour in the third taxable year in which the qualified
20 energy generator produces electricity using a solar-light-
21 derived or solar-heat-derived qualified energy resource;

22 (4) three cents (\$.03) per kilowatt-hour in
23 the fourth taxable year in which the qualified energy generator
24 produces electricity using a solar-light-derived or solar-heat-
25 derived qualified energy resource;

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1 (5) three and one-half cents (\$.035) in the
2 fifth taxable year in which the qualified energy generator
3 produces electricity using a solar-light-derived or solar-heat-
4 derived qualified energy resource;

5 (6) four cents (\$.04) in the sixth taxable
6 year in which the qualified energy generator produces
7 electricity using a solar-light-derived or solar-heat-derived
8 qualified energy resource;

9 (7) three and one-half cents (\$.035) in the
10 seventh taxable year in which the qualified energy generator
11 produces electricity using a solar-light-derived or solar-heat-
12 derived qualified energy resource;

13 (8) three cents (\$.03) per kilowatt-hour in
14 the eighth taxable year in which the qualified energy generator
15 produces electricity using a solar-light-derived or solar-heat-
16 derived qualified energy resource;

17 (9) two and one-half cents (\$.025) per
18 kilowatt-hour in the ninth taxable year in which the qualified
19 energy generator produces electricity using a solar-light-
20 derived or solar-heat-derived qualified energy resource; and

21 (10) two cents (\$.02) per kilowatt-hour in the
22 tenth taxable year in which the qualified energy generator
23 produces electricity using a solar-light-derived or solar-heat-
24 derived qualified energy resource.

25 ~~[D.]~~ E. A taxpayer eligible for a renewable energy

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1 production tax credit pursuant to Subsection B of this section
2 shall be eligible for the renewable energy production tax credit
3 for ten consecutive years, beginning on the date the qualified
4 energy generator begins producing electricity.

5 ~~[E.]~~ F. As used in this section:

6 (1) "biomass" means ~~[agricultural or animal~~
7 ~~waste; thinnings from trees less than fifteen inches in~~
8 ~~diameter, slash and brush; lumbermill or sawmill residues; and~~
9 ~~salt cedar and other phreatophytes removed from watersheds or~~
10 ~~river basins]~~ organic material that is available on a renewable
11 or recurring basis, including:

12 (a) forest-related materials, including
13 mill residues, logging residues, forest thinnings, slash, brush,
14 low-commercial value materials or undesirable species, salt
15 cedar and other phreatophyte or woody vegetation removed from
16 river basins or watersheds and woody material harvested for the
17 purpose of forest fire fuel reduction or forest health and
18 watershed improvement;

19 (b) agricultural-related materials,
20 including orchard trees, vineyard, grain or crop residues,
21 including straws and stover, aquatic plants and agricultural
22 processed co-products and waste products, including fats, oils,
23 greases, whey and lactose;

24 (c) animal waste, including manure and
25 slaughterhouse and other processing waste;

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1 (d) solid woody waste materials,
2 including landscape or right-of-way tree trimmings, rangeland
3 maintenance residues, waste pallets, crates and manufacturing,
4 construction and demolition wood wastes, excluding
5 pressure-treated, chemically treated or painted wood wastes and
6 wood contaminated with plastic;

7 (e) crops and trees planted for the
8 purpose of being used to produce energy;

9 (f) landfill gas, wastewater treatment
10 gas and biosolids, including organic waste byproducts generated
11 during the wastewater treatment process; and

12 (g) segregated municipal solid waste,
13 excluding tires and medical and hazardous waste;

14 (2) "qualified energy generator" means a
15 facility with at least [~~ten megawatts~~] one megawatt generating
16 capacity located in New Mexico that produces electricity using a
17 qualified energy resource and that sells that electricity to an
18 unrelated person; and

19 (3) "qualified energy resource" means a
20 resource that generates electrical energy by means of a
21 fluidized bed technology or similar low-emissions technology or
22 a zero-emissions generation technology that has substantial
23 long-term production potential and that uses only the following
24 energy sources:

25 (a) solar light;

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- 1 (b) solar heat;
- 2 (c) wind; or
- 3 (d) biomass.

4 ~~[F-]~~ G. A person that holds title to a facility
5 generating electricity from a qualified energy resource or ~~[one]~~
6 a person that leases such a facility from a county or
7 municipality pursuant to an industrial revenue bond may request
8 certification of eligibility for the renewable energy production
9 tax credit from the energy, minerals and natural resources
10 department, which shall determine if the facility is a qualified
11 energy generator. ~~[provided that]~~ The energy, minerals and
12 natural resources department may certify the eligibility of an
13 energy generator only if the total amount of electricity that
14 may be produced annually by all qualified energy generators that
15 are certified pursuant to this section and pursuant to the
16 Income Tax Act will not exceed a total of two million megawatt-
17 hours plus an additional five hundred thousand megawatt-hours
18 produced by qualified energy generators using a solar-light-
19 derived or solar-heat-derived qualified energy resource.
20 Applications shall be considered in the order received. The
21 energy, minerals and natural resources department may estimate
22 the annual power-generating potential of a generating facility
23 for the purposes of this section. The energy, minerals and
24 natural resources department shall issue a certificate to the
25 applicant stating whether the facility is an eligible qualified

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1 energy generator and the estimated annual production potential
2 of the generating facility, which shall be the limit of that
3 facility's energy production eligible for the tax credit for the
4 taxable year. The energy, minerals and natural resources
5 department may issue rules governing the procedure for
6 administering the provisions of this subsection.

7 ~~[G.]~~ H. A taxpayer may be allocated all or a portion
8 of the right to claim a renewable energy production tax credit
9 without regard to proportional ownership interest if:

10 (1) the taxpayer owns an interest in a
11 business entity that is taxed for federal income tax purposes as
12 a partnership;

13 (2) the business entity:
14 (a) would qualify for the renewable
15 energy production tax credit pursuant to Paragraph (1) or (2) of
16 Subsection B of this section;

17 (b) owns an interest in a business entity
18 that is also taxed for federal income tax purposes as a
19 partnership and that would qualify for the renewable energy
20 production tax credit pursuant to Paragraph (1) or (2) of
21 Subsection B of this section; or

22 (c) owns, through one or more
23 intermediate business entities that are each taxed for federal
24 income tax purposes as a partnership, an interest in the
25 business entity described in Subparagraph (b) of this paragraph

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1 [~~(2)~~ of this subsection];

2 (3) the taxpayer and all other taxpayers
3 allocated a right to claim the renewable energy production tax
4 credit pursuant to this subsection own collectively at least a
5 five percent interest in a qualified energy generator;

6 (4) the business entity provides notice of the
7 allocation and the taxpayer's interest to the energy, minerals
8 and natural resources department on forms prescribed by that
9 department; and

10 (5) the energy, minerals and natural resources
11 department certifies the allocation in writing to the taxpayer.

12 [~~H.~~] I. Upon receipt of notice of an allocation of
13 the right to claim all or a portion of the renewable energy
14 production tax credit, the energy, minerals and natural
15 resources department shall promptly certify the allocation in
16 writing to the recipient of the allocation.

17 [~~F.~~] J. A taxpayer may claim the renewable energy
18 production tax credit by submitting to the taxation and revenue
19 department the certificate issued by the energy, minerals and
20 natural resources department, pursuant to Subsection [~~F.~~] G or
21 [~~G.~~] H of this section, documentation showing the taxpayer's
22 interest in the facility, documentation of the amount of
23 electricity produced by the facility in the taxable year and any
24 other information the taxation and revenue department may
25 require to determine the amount of the tax credit due the

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1 taxpayer.

2 K. If the requirements of this section have been
3 complied with, the department shall approve the renewable energy
4 production tax credit. The credit may be deducted from a
5 taxpayer's New Mexico corporate income tax liability for the
6 taxable year for which the credit is claimed. If the amount of
7 tax credit exceeds the taxpayer's corporate income tax liability
8 for the taxable year:

9 (1) the excess may be carried forward for a
10 period of five taxable years; or

11 (2) if the tax credit was issued with respect
12 to a qualified energy generator that first produced electricity
13 using a qualified energy resource on or after October 1, 2007,
14 the excess shall be refunded to the taxpayer.

15 ~~[J-]~~ L. Once a taxpayer has been granted a renewable
16 energy production tax credit for a given facility, that taxpayer
17 shall be allowed to retain the facility's original date of
18 application for tax credits for that facility until either the
19 facility goes out of production for more than six consecutive
20 months in a year or until the facility's ten-year eligibility
21 has expired.

22 ~~[K. The renewable energy production tax credit may~~
23 ~~be deducted from the taxpayer's New Mexico corporate income tax~~
24 ~~liability for a taxable year. If the amount of the tax credit~~
25 ~~claimed exceeds the taxpayer's corporate income tax liability,~~

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1 ~~the excess may be carried forward for up to five consecutive~~
2 ~~taxable years.]"~~

3 Section 2. A new section of the Income Tax Act is enacted
4 to read:

5 "[NEW MATERIAL] RENEWABLE ENERGY PRODUCTION TAX CREDIT.--

6 A. The tax credit provided in this section may be
7 referred to as the "renewable energy production tax credit".
8 The tax credit provided in this section may not be claimed with
9 respect to the same electricity production for which a tax
10 credit pursuant to Section 7-2A-19 has been claimed.

11 B. A taxpayer who files an individual New Mexico
12 income tax return and who is not a dependent of another taxpayer
13 is eligible for the renewable energy production tax credit if
14 the taxpayer:

15 (1) holds title to a qualified energy
16 generator; or

17 (2) leases property upon which a qualified
18 energy generator operates from a county or municipality under
19 authority of an industrial revenue bond.

20 C. The amount of the tax credit shall equal one cent
21 (\$.01) per kilowatt-hour of the first four hundred thousand
22 megawatt-hours of electricity produced by the qualified energy
23 generator in the taxable year using a wind- or biomass-derived
24 qualified energy resource, provided that the total amount of tax
25 credits claimed by all taxpayers for a single qualified energy

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1 generator in a taxable year using a wind- or biomass-derived
2 qualified energy resource shall not exceed one cent (\$.01) per
3 kilowatt-hour of the first four hundred thousand megawatt-hours
4 of electricity produced by the qualified energy generator.

5 D. The amount of the tax credit for electricity
6 produced by a qualified energy generator in the taxable year
7 using a solar-light-derived or solar-heat-derived qualified
8 energy resource shall be at the amounts specified in Paragraphs
9 (1) through (10) of this subsection; provided that the total
10 amount of tax credits claimed for a taxable year by all
11 taxpayers for a single qualified energy generator using a solar-
12 light-derived or solar-heat-derived qualified energy resource
13 shall be limited to the first two hundred thousand megawatt-
14 hours of electricity produced by the qualified energy generator
15 in the taxable year:

16 (1) one and one-half cents (\$.015) per
17 kilowatt-hour in the first taxable year in which the qualified
18 energy generator produces electricity using a solar-light-
19 derived or solar-heat-derived qualified energy resource;

20 (2) two cents (\$.02) per kilowatt-hour in the
21 second taxable year in which the qualified energy generator
22 produces electricity using a solar-light-derived or solar-heat-
23 derived qualified energy resource;

24 (3) two and one-half cents (\$.025) per
25 kilowatt-hour in the third taxable year in which the qualified

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1 energy generator produces electricity using a solar-light-
2 derived or solar-heat-derived qualified energy resource;

3 (4) three cents (\$.03) per kilowatt-hour in the
4 fourth taxable year in which the qualified energy generator
5 produces electricity using a solar-light-derived or solar-heat-
6 derived qualified energy resource;

7 (5) three and one-half cents (\$.035) in the
8 fifth taxable year in which the qualified energy generator
9 produces electricity using a solar-light-derived or solar-heat-
10 derived qualified energy resource;

11 (6) four cents (\$.04) in the sixth taxable year
12 in which the qualified energy generator produces electricity
13 using a solar-light-derived or solar-heat-derived qualified
14 energy resource;

15 (7) three and one-half cents (\$.035) in the
16 seventh taxable year in which the qualified energy generator
17 produces electricity using a solar-light-derived or solar-heat-
18 derived qualified energy resource;

19 (8) three cents (\$.03) per kilowatt-hour in the
20 eighth taxable year in which the qualified energy generator
21 produces electricity using a solar-light-derived or solar-heat-
22 derived qualified energy resource;

23 (9) two and one-half cents (\$.025) per
24 kilowatt-hour in the ninth taxable year in which the qualified
25 energy generator produces electricity using a solar-light-

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1 derived or solar-heat-derived qualified energy resource; and

2 (10) two cents (\$.02) per kilowatt-hour in the
3 tenth taxable year in which the qualified energy generator
4 produces electricity using a solar-light-derived or solar-heat-
5 derived qualified energy resource.

6 E. A taxpayer eligible for a renewable energy
7 production tax credit pursuant to Subsection B of this section
8 shall be eligible for the renewable energy production tax credit
9 for ten consecutive years, beginning on the date the qualified
10 energy generator begins producing electricity.

11 F. As used in this section:

12 (1) "biomass" means organic material that is
13 available on a renewable or recurring basis, including:

14 (a) forest-related materials, including
15 mill residues, logging residues, forest thinnings, slash, brush,
16 low-commercial-value materials or undesirable species, salt
17 cedar and other phreatophyte or woody vegetation removed from
18 river basins or watersheds and woody material harvested for the
19 purpose of forest fire fuel reduction or forest health and
20 watershed improvement;

21 (b) agricultural-related materials,
22 including orchard trees, vineyard, grain or crop residues,
23 including straws and stover, aquatic plants and agricultural
24 processed co-products and waste products, including fats, oils,
25 greases, whey and lactose;

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1 (c) animal waste, including manure and
2 slaughterhouse and other processing waste;

3 (d) solid woody waste materials,
4 including landscape or right-of-way tree trimmings, rangeland
5 maintenance residues, waste pallets, crates and manufacturing,
6 construction and demolition wood wastes, excluding
7 pressure-treated, chemically treated or painted wood wastes and
8 wood contaminated with plastic;

9 (e) crops and trees planted for the
10 purpose of being used to produce energy;

11 (f) landfill gas, wastewater treatment
12 gas and biosolids, including organic waste byproducts generated
13 during the wastewater treatment process; and

14 (g) segregated municipal solid waste,
15 excluding tires and medical and hazardous waste;

16 (2) "qualified energy generator" means a
17 facility with at least one megawatt generating capacity located
18 in New Mexico that produces electricity using a qualified energy
19 resource and that sells that electricity to an unrelated person;
20 and

21 (3) "qualified energy resource" means a
22 resource that generates electrical energy by means of a
23 fluidized bed technology or similar low-emissions technology or
24 a zero-emissions generation technology that has substantial
25 long-term production potential and that uses only the following

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1 energy sources:

- 2 (a) solar light;
- 3 (b) solar heat;
- 4 (c) wind; or
- 5 (d) biomass.

6 G. A person that holds title to a facility
7 generating electricity from a qualified energy resource or a
8 person that leases such a facility from a county or municipality
9 pursuant to an industrial revenue bond may request certification
10 of eligibility for the renewable energy production tax credit
11 from the energy, minerals and natural resources department,
12 which shall determine if the facility is a qualified energy
13 generator. The energy, minerals and natural resources
14 department may certify the eligibility of an energy generator
15 only if the total amount of electricity that may be produced
16 annually by all qualified energy generators that are certified
17 pursuant to this section and pursuant to Section 7-2A-19 NMSA
18 1978 will not exceed a total of two million megawatt-hours plus
19 an additional five hundred thousand megawatt-hours produced by
20 qualified energy generators using a solar-light-derived or
21 solar-heat-derived qualified energy resource. Applications
22 shall be considered in the order received. The energy, minerals
23 and natural resources department may estimate the annual power-
24 generating potential of a generating facility for the purposes
25 of this section. The energy, minerals and natural resources

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1 department shall issue a certificate to the applicant stating
2 whether the facility is an eligible qualified energy generator
3 and the estimated annual production potential of the generating
4 facility, which shall be the limit of that facility's energy
5 production eligible for the tax credit for the taxable year.

6 The energy, minerals and natural resources department may issue
7 rules governing the procedure for administering the provisions
8 of this subsection.

9 H. A taxpayer may be allocated all or a portion of
10 the right to claim a renewable energy production tax credit
11 without regard to proportional ownership interest if:

12 (1) the taxpayer owns an interest in a business
13 entity that is taxed for federal income tax purposes as a
14 partnership;

15 (2) the business entity:

16 (a) would qualify for the renewable
17 energy production tax credit pursuant to Paragraph (1) or (2) of
18 Subsection B of this section;

19 (b) owns an interest in a business entity
20 that is also taxed for federal income tax purposes as a
21 partnership and that would qualify for the renewable energy
22 production tax credit pursuant to Paragraph (1) or (2) of
23 Subsection B of this section; or

24 (c) owns, through one or more
25 intermediate business entities that are each taxed for federal

1 income tax purposes as a partnership, an interest in the
2 business entity described in Subparagraph (b) of this paragraph;

3 (3) the taxpayer and all other taxpayers
4 allocated a right to claim the renewable energy production tax
5 credit pursuant to this subsection own collectively at least a
6 five percent interest in a qualified energy generator;

7 (4) the business entity provides notice of the
8 allocation and the taxpayer's interest to the energy, minerals
9 and natural resources department on forms prescribed by that
10 department; and

11 (5) the energy, minerals and natural resources
12 department certifies the allocation in writing to the taxpayer.

13 I. Upon receipt of notice of an allocation of the
14 right to claim all or a portion of the renewable energy
15 production tax credit, the energy, minerals and natural
16 resources department shall promptly certify the allocation in
17 writing to the recipient of the allocation.

18 J. A husband and wife who file separate returns for
19 a taxable year in which they could have filed a joint return may
20 each claim only one-half of the credit that would have been
21 allowed on a joint return.

22 K. A taxpayer may claim the renewable energy
23 production tax credit by submitting to the taxation and revenue
24 department the certificate issued by the energy, minerals and
25 natural resources department, pursuant to Subsection G or H of

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1 this section, documentation showing the taxpayer's interest in
2 the facility, documentation of the amount of electricity
3 produced by the facility in the taxable year and any other
4 information the taxation and revenue department may require to
5 determine the amount of the tax credit due the taxpayer.

6 L. If the requirements of this section have been
7 complied with, the department shall approve the renewable energy
8 production tax credit. The credit may be deducted from a
9 taxpayer's New Mexico income tax liability for the taxable year
10 for which the credit is claimed. If the amount of tax credit
11 exceeds the taxpayer's income tax liability for the taxable
12 year:

13 (1) the excess may be carried forward for a
14 period of five taxable years; or

15 (2) if the tax credit was issued with respect
16 to a qualified energy generator that first produced electricity
17 using a qualified energy resource on or after October 1, 2007,
18 the excess shall be refunded to the taxpayer.

19 M. Once a taxpayer has been granted a renewable
20 energy production tax credit for a given facility, that taxpayer
21 shall be allowed to retain the facility's original date of
22 application for tax credits for that facility until either the
23 facility goes out of production for more than six consecutive
24 months in a year or until the facility's ten-year eligibility
25 has expired."

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